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10/701,869	11/05/2003	Todd M. Goin	200310588-1	6726

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EXAMINER	
TRAN, NGHI V	
ART UNIT	**PAPER NUMBER**
2151	

NOTIFICATION DATE	DELIVERY MODE
09/17/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/701,869	GOIN ET AL.	
	Examiner	Art Unit	
	NGHI V. TRAN	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the amendment filed on June 05, 2008. No claims have been amended. No claims have been canceled. Therefore, claims 1-20 are presented for further examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 4-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Diao et al., United States Patent Application Publication Number 2005/0086645 (hereinafter Diao).

4. With respect to claim 1, Diao teaches a method of adjusting relative value of implemented computer configuration changes [see abstract], the method comprising:

- identifying computer configuration changes [= configuration change, paragraphs 0050-0051] in a computer system [= at least one computing system, paragraph 0006];
- obtaining performance metrics [= obtaining the one or more generically-expressed performance metric, paragraph 0008] for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] implemented in the computer system [fig.2A]; and
- assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012].

5. With respect to claim 4, Diao further teaches removing computer configuration changes not resulting in performance improvements from future recommendation sets [= modifying and/or updating to change configuration, paragraphs 0052-0053].

6. With respect to claim 5, Diao further teaches summarizing recommended actions identified for a computer user, configuration changes implemented, and the resulting

change in performance [= a list of configuration parameters, paragraphs 0051-0053 and fig.2D].

7. With respect to claim 6, Diao further teaches providing a report with performance trends on a plurality of computer systems where recommended configuration changes are not implemented [= a list of configuration parameters, paragraphs 0051-0053 and fig.2D].

8. With respect to claim 7, Diao further teaches analyzing computer metrics on the computer system and proposing configuration changes based on the analysis of computer metrics [= evaluate one or more performance metric associated with the one or more resources given one or more configurations of the one or more resources, paragraph 0012].

9. With respect to claim 8, Diao further teaches wherein obtaining performance metrics for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] comprises accessing stored computer metrics [= list of performance metrics, paragraph 0049] in a database [= database name, paragraph 0038].

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diao as applied to claim 1 above, and further in view of Little et al., United States Patent Number 6,678,639 (hereinafter Little).

12. With respect to claim 2, Diao does not explicitly show increasing priority values for computer configuration changes resulting in performance improvements, the priority values being used for priority of the computer configuration changes in future recommendation sets.

In a configuration method, Little suggests increasing priority values for computer configuration changes resulting in performance improvements, the priority values being used for priority of the computer configuration changes in future recommendation sets [see abstract and col. 2, ll. 09-42].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Little by increasing priority values for computer configuration changes resulting in performance improvements

because this feature might instruct the user that when a new hardware or software system is being deployed [Little, col. 20, ll. 23-63]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to instruct the user to upgrade the firmware to the latest firmware [Little, col. 7, ll. 59-67].

13. With respect to claim 3, Diao does not explicitly show classifying computer configuration changes not resulting in performance improvements as secondary recommendations in future recommendation sets.

In a configuration method, Little further teaches classifying computer configuration changes not resulting in performance improvements as secondary recommendations in future recommendation sets [fig.29 and col.7, ll.16 through col.8, ll.62].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Little by classifying computer configuration changes not resulting in performance improvements as secondary recommendations in future recommendation sets because this feature might instruct the user that when a new hardware or software system is being deployed [Little, col. 20, ll. 23-63]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to instruct the user to upgrade the firmware to the latest firmware [Little, col. 7, ll. 59-67].

14. Claims 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diao in view of Little.

15. With respect to claims 9, 11, and 14-18, Diao teaches a system [see abstract] comprising:

- hardware components [= processor 610, memory 620, I/O devices 630, and network interface 640, fig.6] in a computer system [= at least one computing system, paragraph 0006];
- installed software in the computer system [paragraphs 0002, 0028, and 0071];
- configuration settings [= configuration parameters, paragraph 0020] indicating configuration conditions [= these parameters can include the definition of the system and its operation or tuning, paragraph 0021] for the hardware components and the installed software [paragraphs 0002, 0028, and 0071]; and
- programmed instructions configured to: identify implemented configuration changes [= configuration change, paragraphs 0050-051] in the computer system [= at least one computing system, paragraph 0006];
- collect performance metrics [= obtaining the one or more generically expressed performance metric, paragraph 0008] associated with the computer system having the identified implemented configuration changes [= cause a change in the one or more configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012].

However, Diao does not explicitly show weight effectiveness of the identified implemented configuration changes.

In a configuration method, Little suggests weight effectiveness of the identified implemented configuration changes [see abstract and col. 2, ll. 09-42].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Little by because this feature might instruct the user that when a new hardware or software system is being deployed [Little, col. 20, ll. 23-63]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to instruct the user to upgrade the firmware to the latest firmware [Little, col. 7, ll. 59-67].

16. With respect to claim 10, Diao further teaches programmed instructions configured to analyze the computer system and propose configuration changes based on the analysis [= evaluate one or more performance metric associated with the one or more resources given one or more configurations of the one or more resources, paragraph 0012].

17. With respect to claims 12 and 19, Diao further teaches programmed instructions configured to provide reports on implemented configuration changes [= a list of performance metrics, paragraph 0049].

18. With respect to claims 13 and 20, Diao does not explicitly show wherein

proposed configuration changes with low weighted effectiveness are removed from a recommendation set.

In a configuration method, Little suggests weight effectiveness of the identified implemented configuration changes [see abstract and col. 2, ll. 09-42].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Little by because this feature might instruct the user that when a new hardware or software system is being deployed [Little, col. 20, ll. 23-63]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to instruct the user to upgrade the firmware to the latest firmware [Little, col. 7, ll. 59-67].

Response to Arguments

19. Applicant's arguments filed June 05, 2008 have been fully considered but they are not persuasive as following: Diao teaches a method of adjusting relative value of implemented computer configuration changes [see abstract], the method comprising: identifying computer configuration changes [= configuration change, paragraphs 0050-0051] in a computer system [= at least one computing system, paragraph 0006]; obtaining performance metrics [= obtaining the one or more generically-expressed performance metric, paragraph 0008] for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer

configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] implemented in the computer system [fig.2A]; and assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012].

20. In response to applicant's arguments that there is no teaching or suggestion in Diao of identifying computer configuration changes, the examiner respectfully disagrees. Diao teaches identifying computer configuration changes [= configuration change, paragraphs 0050-0051]. For example, Diao discloses the control logic **124** will determine [= identify] a new configuration step 230 of fig.2A [= computer configuration changes] for any set of resource needing a change in configuration parameter [= computer configuration changes] to improve overall system performance [paragraphs 0050-0051]. Therefore, Diao discloses claimed feature as show in the above.

21. In response to applicant's arguments that there is no teaching or suggestion in Diao of obtaining performance metrics after a configuration change, the examiner respectfully disagrees. Diao discloses obtaining performance metrics [= obtaining the one ore performance metric, paragraph 0008] after a configuration change [= after the change configuration, step 250 of fig.2A]. For example, Diao discloses getting performance report, step 210 of fig.2A, [= performance report including performance

metric, see paragraph 0008] after generically change configuration [= after a configuration change], see fig.2A. Therefore, Diao discloses claimed feature as show in the above.

22. In response to applicant's arguments that there is no teaching or suggestion in Diao of assessing effectiveness of the computer configuration changes based on the obtained performance metrics, the examiner respectfully disagrees. Diao discloses assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012]. Therefore, Diao discloses claimed feature as show in the above.

23. In response to applicant's arguments that there is no teaching or suggestion in Diao of assessing effectiveness of the computer configuration changes based on the obtained performance metrics, the examiner respectfully disagrees. Diao discloses assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012]. Therefore, Diao discloses claimed feature as show in the above.

24. In response to applicant's arguments that Little fails to make up for the deficiencies of Diao, the examiner respectfully disagrees. Applicant obviously attacks

references individually without taking into consideration based on the teaching of combinations of references as show in the above. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642F. 2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F. 2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Diao and Little are analogous art. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Little by because this feature might instruct the user that when a new hardware or software system is being deployed [Little, col. 20, ll. 23-63]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to instruct the user to upgrade the firmware to the latest firmware [Little, col. 7, ll. 59-67].

Conclusion

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi V. Tran whose telephone number is (571) 272-4067. The examiner can normally be reached on Monday-Thursday and every other Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nghi Tran
Patent Examiner
Art Unit 2151

September 2, 2008
/John Follansbee/
Supervisory Patent Examiner, Art Unit 2151